

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DEIDRE LECHOWSKI-MERCADO, and
OWEN MERCADO,

Plaintiffs,

vs.

SEELY SWAN HIGH SCHOOL, and
MISSOULA COUNTY PUBLIC
SCHOOL DISTRICT, a department of
MISSOULA COUNTY, MT,

Defendants.

CV 21-10-M-DLC

ORDER

Before the Court is nonparty Missoula County's Motion to Quash Subpoena Duces Tecum-Handelman. (Doc. 9.) On February 5, 2021, the Court granted the Plaintiffs' request to issue a third-party subpoena to Mark Handelman. (Doc. 5 at 2.) Missoula County now moves to quash that subpoena based on privilege. (Doc. 9.) Missoula County indicates that Defendants do not oppose their motion. (*Id.* at 1.)

The Court is skeptical that this motion, filed by a nonparty, is properly before it. *See DRFP, LLC v. Republica Bolivariana de Venezuela*, No. 2:04-CV-793, 2012 WL 995288, at *2 (S.D. Ohio Mar. 22, 2012). Nevertheless, since filing, Plaintiffs have filed a document titled "Non-opposition to Motion to Quash

Subpoena Duces Tecum to Handelman.” (Doc. 12.) Because the parties are now in agreement as to their intent, the Court will not elevate form over function. In the exercise of its discretion, the Court will construe Plaintiffs’ recent filing (Doc. 12) as a motion withdrawing their request for a subpoena. Accordingly,

IT IS ORDERED that Plaintiffs’ Motion (Doc. 12) is GRANTED. The Court’s order granting third-party subpoenas (Doc. 5) is rescinded to the extent it authorized a third-party subpoena under Fed. R. Civ. P. 45 to Mark Handelman, and any subpoena already issued pursuant to that order is hereby quashed.

IT IS FURTHER ORDERED that Missoula County’s Motion (Doc. 9) is DENIED as moot.

DATED this 23rd day of March, 2021.



Dana L. Christensen, District Judge
United States District Court